



POLICE DEPARTMENT

September 22, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Andrew Hunt  
Tax Registry No. 941921  
88 Detective Squad  
Disciplinary Case No. 2013-10021  
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The above-named member of the Department appeared before me on April 23 and August 12, 2015, charged with the following:

1. Said Detective Andrew Hunt, assigned to Narcotics Brooklyn South, while on sick report, on or about June 27, 2013, within the confines [REDACTED], New York, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Detective was involved in a verbal dispute and physical altercation with Person A.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Detective Andrew Hunt, assigned to Narcotics Brooklyn South, while on sick report, on or about June 27, 2013, within the confines [REDACTED], New York, having been involved in an unusual police occurrence did thereafter fail and neglect to promptly notify the Operations Unit of the New York City Police Department, as required.

P.G. 212-32, Page 1, Note – COMMAND OPERATIONS (*Dismissed*)

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by Philip Karasyk, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent is found Not Guilty of Specification No. 1. Specification No. 2 was dismissed by the Department Advocate.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Sergeant Lisa Charles of the Nassau County Police Department and Sergeant James Coleman as witnesses.

#### Respondent's Case

Respondent testified on his own his behalf.

### FINDINGS AND ANALYSIS

It is undisputed that on the date of the charged misconduct, June 27, 2013, Respondent was [REDACTED], Person A and [REDACTED] in Nassau County. Respondent was assigned to Brooklyn South Narcotics, but was out on a line-of-duty injury and had shoulder surgery approximately six days before the alleged incident. (Tr. 93). On June 27, 2013, Person A called 911 at



approximately 10:00 PM. She was crying and reported being "punched" in the face. (Dept. Ex. 2). The next day she went to the 4<sup>th</sup> Precinct in Nassau County and reported that she had been slapped in the face by Respondent. (Dept. Ex. 1). Nassau County Detective Lisa Charles, based on Person A's complaint, determined that Respondent had committed the crimes of criminal mischief and endangering the welfare of a child and she contacted Respondent to surrender. He did surrender to the Nassau Police and was arrested on June 29, 2013. The criminal charges against him were all dismissed on January 30, 2014, after Person A notified the Assistant District Attorney that she would not cooperate. (Resp. Ex. G, Tr. 119).

Person A also did not appear to testify in this hearing, despite being subpoenaed by the Department Advocate. (Tr. 6). The Department submitted a transcript of an interview of Person A by members of the Department conducted on June 29, 2013, as evidence in this case. In her hearsay statement, Person A stated that on June 27, 2013, Respondent had accused her of taking [REDACTED] after his arm surgery. (Resp. Ex. F, page 6). She further stated that during the argument, when she went to pick up [REDACTED], Respondent, "smacked me across the face with his right hand on my left side." (Resp. Ex. F, page 11). She said she tried to call 911 but Respondent grabbed the phone and tried to break it up and then hung up the phone when 911 called back. (Resp. Ex. F, page 12). Eventually Person A [REDACTED]. The next day, June 28, 2013, she went to the 4<sup>th</sup> Precinct in Nassau County to report the incident. (Resp. Ex. F, page 12). Person A stated that she took pictures of her face, which was swollen, but no pictures were collected by the questioners and none were offered as evidence in this hearing. (Resp. Ex. F, page 14).

Respondent did testify in this hearing. He testified that Person A was diagnosed with [REDACTED] in the spring of 2012. (Tr. 83). He further described a series of past [REDACTED] incidents between him and Person A which began around that time. Five Nassau County Police Department Case Reports were admitted into evidence by Respondent without objection by the Department. (Resp. Ex. A, B, C, D, E). The incidents took place between June 16, 2012 and October 16, 2012. In the June 17, 2012, report, it indicates that Person A, "does suffer from [REDACTED] [REDACTED].." (Resp. Ex. A). In the October 15, 2012, report, the complainant, who was Respondent, indicated that Person A "has a history of [REDACTED] which she has been refusing to take." On this occasion Respondent had asked for a police escort to take him to pick up [REDACTED] in response to Person

A's request that he [REDACTED] as she was not feeling well. (Resp. Ex. B).

With regard to the charged misconduct, Respondent denied that he hit Person A. (Tr. 98). As he described what happened, he testified that he did notice that some of his [REDACTED] was missing and he confronted Person A about it. She denied taking [REDACTED]. Respondent also checked an Advil bottle she had in her purse and found [REDACTED] pills in it. (Tr. 94-95). He stated that he knew [REDACTED] [REDACTED] they were name brand pills and their insurance plan would only authorize generic prescriptions to be filled. (Tr. 95-96). While they were arguing about these pills, Respondent stated that Person A, "became irate and just volatile." (Tr. 97). Respondent testified that he tried to calm her down and then went to carry [REDACTED] downstairs away from the situation. (Tr. 97). Respondent further testified that Person A



then came running after him, started hitting him on the area he had just had the surgery and then [REDACTED]. (Tr. 98). Respondent followed Person A [REDACTED], got her to give him [REDACTED] who he [REDACTED] and then, "everything kind of quieted down." Respondent described his demeanor during the incident as, "pretty calm." (Tr. 123). The next day he received the phone call from the Nassau Police indicating they wanted to speak to him. (Tr. 99). He stated he had not been aware that Person A had called 911.

Without having the benefit of having Person A actually testify at this hearing, I find that the Department has not proven its case by a preponderance of the evidence based on the her hearsay statements of what she claims to have happened on June 27, 2013. There are inconsistencies among the 911 recording, the statement she signed for the Nassau Police on June 28, 2013, and the statements she gave the Department investigators on June 29, 2013. In her signed statement to the Police and in her statement to the Department investigators, she indicated that Respondent slapped her on her face. (Dept. Ex. 1), but in her 911 call, which was the closest in time to the alleged incident, she several times says she was punched in the face. (Dept. Ex. 2). A slap is quite different from a punch and this is a glaring contradiction. Also, despite her statements that she took a picture to document the swelling, no photographs was ever provided in support of her hearsay statements.

Other inconsistencies are also apparent. In her Police statement she states that at one point Respondent pushed her away from a window, but in the Department interview she described being thrown against a hallway wall. (Dept. Ex. 1). She is also inconsistent with regard to her 911 call. In the Police statement and the June 29, 2013,



statement she states that she "tried" to call 911 but before she was able to speak to 911, Respondent took the phone. This is clearly not accurate since there is a 911 call from Person A. She also described Respondent grabbing the phone and hanging it up when 911 called back. There is no other voice in the background on either of the 911 recordings. It seems unlikely that if Respondent was there in an agitated state trying to secure the phone that he would not have been heard at all in the background.

Respondent on the other hand testified at the hearing under oath in a straightforward manner. He added that he and Person A are [REDACTED] there have been no further [REDACTED], nor have the police been [REDACTED], since June 27, 2013. (Tr. 101-102).

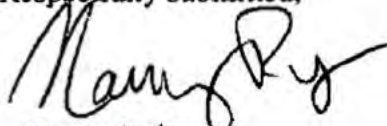
The Department has charged that Respondent was "involved" in a verbal dispute and physical altercation with Person A. While Respondent has admitted he argued with Person A, as held in prior cases, mere verbal disputes do not constitute actionable misconduct. (Disciplinary Case No. 2008-84581, signed November 15, 2010; "The use of angry and even profane language during an argument regarding a non-Department matter between an off-duty member of the Department and a non-member, without more, does not constitute misconduct." See also Disciplinary Cases Nos. 2007-82572, signed June 16, 2009; and 2009-85184, signed July 12, 2010).

With regard to the physical altercation, while Respondent testified that he was hit on the arm by Person A, the Department has failed to prove by a preponderance of the evidence that Respondent hit Person A. As the mere recipient of a physical attack, the Court does not find that Respondent was "involved" in a physical altercation. In addition, even if the word "involved" was interpreted to mean that a mere recipient of

a physical attack was "involved," previous cases have held that the non-aggressor in physical altercations is not guilty of misconduct. (See Disciplinary Case No. 2007-82951, signed August 13, 2008; Respondent was found Not Guilty of engaging in an altercation with his estranged wife during a struggle over a camera where evidence showed the wife was the aggressor in the incident. See also Disciplinary Cases Nos. 2009-85183, signed November 22, 2010; 2005-80585, signed January 10, 2006; and 2007-83440, signed January 9, 2009). The Department has not proven by a preponderance of the evidence that Respondent was the aggressor in any physical altercation with Person A

Respondent is found Not Guilty of Specification 1.

Respectfully submitted,



Nancy R. Ryan

Assistant Deputy Commissioner - Trials

**APPROVED**

NOV 06 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER